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# Fax

To: J. Michael Carey From: Carol E. Schatz  
Fax: 978-1027 Pages: 13  
Phone: \_\_\_\_\_ Date: 12/12/01  
Re: \_\_\_\_\_ CC: \_\_\_\_\_

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

◆ Comments:

Cc: Karen Kalfayan

December 12, 2001

J. Michael Carey  
Office of the City Clerk

Cc: Karen Kalfayan

Dear Michael:

As I promised, here's our comments and Tracey Lovejoy's comments on our concerns as we see them to the contract.

See you tomorrow.

Sincerely,

Carol E. Schatz

**MEMORANDUM**

**TO:** Carol

**FROM:** Randall

**DATE:** December 12, 2001

**RE:** New City BID Contract

=====

Here are the areas of concern relating to the 'revised' City contract:

**GENERAL ISSUES:**

- Remove any reference to Advisory Board from complete contract
- Issue of City assessments needs to be addressed. A payment schedule needs to address the issue of other DIRECT billings by the City, to include how to track & follow up (utilities, other government parcels (state, school, etc.)
- Issue of BID's being under a "City Personal Service Contract". We are NOT.
- Issue of DOCUMENTING existing City Base Line Services
- Need Subcontract language (in current contract) put back in; remove 2.5
- ANY reporting by the BID's should refer to section 36600 of S&H code.

1.1 Why are they breaking the years of the contract (normally 5 years) into "operating years"? **CURRENT** contract just lists as years 1 to 5.

1.2 Not necessary. Is governed by existing laws.

2.2 Need to keep at an annual reporting, not quarterly progress reports.  
Here again...it's the property owners that can take action if the BID is not operating properly.

- a) Not all BID's are on a fiscal year (we are on a calendar) and the date for the annual report should be not more than 160 days after the close of the previous year of BID business (operating period). The request for this is too far in advance and may not be in keeping with the operating cycle of the BID (such as ours).
- b) Do not need quarterly reporting on activities. This is the responsibility of the BID governing board of directors.

- 2.3 This should be included in the Annual report (as it is now). We are currently required to have reviewed financial statements. It is an additional cost to audit, but it provides for some independent oversight, outside of the City realm. In accordance with Generally approved auditing practices, financial statements can not be compiled and audited. There are three levels of acceptable accounting reporting. A reviewed financial statement by a CPA is more than adequate for the purpose of the BID's.
- 2.4 This is not for the Clerk's office to decide. This is governed by the management plan and directed by the board of directors and/or property owners.
- 2.5 **REMOVE.** Language restricts payments for "items not budgeted". What does this mean?? Subcontract language (in our current contract) should be put back in.
- 2.6 subsection A: Meetings are covered by the State Law: but an annual meeting requirement is OK. The section should only say to hold an annual meeting, that's it. **CURRENT language in our contract is fine.**  
subsection B: They should not dictate how the BID's communicate with the property owners.  
subsection C: Not necessary.
- 2.7 This is something we have been operating under (this 10% rule). Its has not been an issue for us; however, it does go to the issue of approval. This is done via the City Council, not the Clerk's office by submittal of the Annual report, which includes the operating plan for the next year. **CURRENTLY** we have no language in our contract. We have been operating on a VERBAL policy that was established by Mike V. several years ago.
- 2.8 About the same.
- 2.9 We need to add language about the Clerk's office reconciling their submittal to the County with the BID's submission. This is where a large portion of our unbilled amounts comes from. We submit the information; they do not forwarded it to the County as we submitted.
- 3.1 subsection B: Need a direct assessment policy to include how, when and follow-up procedures. Information to be shared with the BID's.  
subsection C: Need policy and how and what actions independent of the BID's they will take. Appeal needs to be THROUGH the BID's, not around them.  
subsection D: Is not something the Clerk's office is able to do nor should

they.

subsection E. Should be expanded to say ONLY after consultation with the BID and no independent action by the clerk's office.

Subsection H: need to set some standard; guidelines. This is open to anyone's interpretation.

- 3.2 Issue of quarterly report and funds being tied to that report. The funds belong to the BID and should be transmitted IMMEDIATELY. We need to establish a timeline (as we currently have, BUT the City misses payment dates) that shows when payments will be made and get away from this percentage payment system we are currently under. If the City has received the funds, they should be transmitted IN FULL to the BID's, minus authorized *approved* City fees.

Secondly is this issue of expenditures exceeding the operating plan. Why is the Clerk's office doing this?? Unless the parcels were inappropriately billed, ANY funds received should be transmitted. We are always going to have this issue of funds from previous years being paid in another year, etc. and a clear understanding that those funds will be transmitted WITHOUT question.

- 3.3 Here again...will cause the clerk's office to interpret.
- 3.4 There is a appeal process that NEEDS to go through the BID's and not be acted independently by the Clerks' office. The two organizations should then come to a resolution on the property owner's inquiry or request for reduction or elimination of assessment. NO unilateral action should be taken by the Clerk's office.
- 3.5 What are confidential records? This should go both for the City and the Corporation.
- 5.1 We need to have HARD established City *recoverable costs*. What are they going to charge (on a formula?//Set rate??) for submitting and disbursing our funds. We also need to discuss their role in collecting delayed payments as indicated in this section and establish proper documentation from the City to support payments.
- 5.2 **REMOVE**. State law governs this activity.
- 6.1 to 6.4 Again...we need to establish fees... Maybe a fee for start-up year and then another for 'operating' BID's. WE CAN NOT leave these charges by the City opened ended as it is now! Is the City actually incurring fees for some of this work?? Does the County actually charge the City?? What are the reports we will receive as part of the fees

(should be reports we need, such as reconciling what parcels accompanied payments, who still owes, government parcel billings )  
What are they are going to charge for??

It is my understanding that the fee we pay is for all of these services,  
PLUS the City needs to assist with some of this cost as a part of having  
the BID's operating for the City's benefit.

8.1 Issue of language: Personal Service Contract.

9.1 **Should be removed.** State law governs modifications to management plan and that is the ONLY way activities can be altered. We don't need independent rules.

11.1 **REMOVE.** It violates State Law and materially goes against every purpose for the BID's being PRIVATE organizations.

12.1 **REMOVE.** Again...have to comply with the Brown Act as to open meetings, but not Political reform act.

13.1 Issue of necessity for a PRIVATE organization.

14.1 City should also hold BID's harmless for their negligence or failure to act.

15.1 to 15.2 Issues may prohibit BID's from contracting with another entity (BID) to operate services if not originally stated in management plan to do that.

17.1 Should comply with language in AB 1021 as for Brown Act related to meetings ONLY.

18.1 **REMOVE** It has been clearly defined previously that BID's are NOT subject to this requirement.

21.1 Issue of City Personal Services Contract. This language opens many doors of compliance. These are NOT City funds. They are assessment dollars directed for a specific purpose, not CITY funds for a service contract.

## MEMORANDUM

TO: Tracey Lovejoy

FROM: Anne Wade

DATE: December 4, 2001

SUBJECT: NEW TOY DISTRICT CONTRACT WITH CITY OF L.A.

I have reviewed our previous Management contract, comparing it to the proposed draft of the new Toy District contract and have compared the new draft with the Hollywood BID draft and find my comments echo Kerry Morrison's in many areas.

**I start with a summary:**

The new agreement breaks each year of the new contract into a separate operating period and has language (see below) that puts the City Clerk's office in the position of interfering with the Bid's progress. The wording could be construed to cut us off from receiving funds from stakeholders received by the County after a specific period ends.

A big change is calling for an "Annual Planning Report" by August 1st of each year to cover work in the following year. Unnecessary duplication of the budget already in the Management plan.

Requires a "audit" by a CPA instead of a compilation. This will substantially increase the amount paid to the CPA – not contemplated when preparing the budget for the management plan.

Requires approval of the City Clerk to vary within the 10% perimeters currently allowed and City Council approval for anything over 10%. If the majority of stakeholders want to change focus during the period of the plan, it becomes a bureaucratic nightmare.

Adds new clause allowing City Clerk to review BID operations when requested by a stakeholder. Does this include a non-assessed property owner?

-2-

Changes how we receive our funds. Not clear on when we can request our funds. Limits disbursement to amount in budget, not amount collected by County. What if we contract for a service in one period, creating a liability, but it is not completed until the next period? Also, not clear how we would receive past due assessments and how they must be accounted for if we do receive them. If we have had to curtail services in one year because of poor collections, and the property owners pay up in the following year – can we increase services? Must we still stick to budget?

Clerk's office has increased the time allowed for them to process our payments from 10 to 20 days. And leaves themselves an out for circumstances beyond their control – like someone on vacation? It has been better toward the end of the year but the boondoggles at the beginning caused delays of months, not days.

There is no limit on what the City can charge for their services including an additional cost for "assistance".

The appendix – with reference in the body of the contract – calls for "Living Wage". Nuff said.

There are references to "Advisory Board" which Kerry states are obsolete.

#### **Detailed comments:**

##### Recitals

B, C, D, E, F

No changes except wording in F but no change in meaning.

G

Added – says we have commenced work prior to signing of agreement.

##### Section 1

The old agreement expires March 2, 2002. We have an overlap of 3 months. The new agreement starts January 1, 2002 and expires December 31, 2004 but calls for 3 periods – allowing extension to expend funds from the previous period **at the sole discretion of the City**. Since many bills are not received until the month after completion of the work, or receipt of the product, we could have a problem at the end of each period and certainly at the end of the Management plan. What would happen to the funds that were retained to pay these bills when the period ended? What would happen to funds retained for renewal several years down the pike?



-3-

Also not clear is whether we will receive funds owed from previous periods? There is ambiguity in the contract about this issue. Also no reference to roll over from a previous bid.

## Section 2

- 2.1 Again refers to City Ordinance and adds the following language: "...relating to conflict of interest, open meetings and public records"
- 2.2A Renames "Annual Report" to "Annual Planning Report"(see Section 6.617 of the code). Planning report is required by August 1<sup>st</sup> for each subsequent year. Draft calls for the first one 8/1/2001 that is incorrect per their wording. Should say 2002. It does away with the Annual report called for in the old contract.
- 2.2B Quarterly reports still required and must refer back to the planning report.
- 2.3 Adds "audited" to CPA requirement. Who carries the additional cost incurred?
- 2.4 No change.
- 2.5 Adds "programs" to wording. No other change.
- 2.6A Has only minor wording insertions.
- 2.6B Requires that the quarterly newsletter be submitted in duplicate to the City Clerk.
- 2.6C No change.
- 2.7 Now requires request to City Clerk to change any line items in budget within the 10% previously allowed. Requires written request to City Council for any change over 10% of the total budget. This is unclear. Are they talking about line items or only if we are spending 10% more than we budgeted overall?
- 2.8 City Clerk inserted. Otherwise no changes.

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- 2.9 Adds the following language to Annual Assessment Preparation. "Any corrections or adjustments to the annual assessment transmittal, as well as the accuracy of any such corrections or adjustments, shall be the responsibility of the Corporation. Upon request of the City Clerk, Corporation hereby agrees to promptly complete a written request for an investigation of discrepancies and make all reasonable efforts to obtain additional related documentation, as described in Section 3.4 herein."

### Section 3

A & B No changes

C. Adds "Business organizations" Who?

D. Adds verbiage but no change in meaning.

E. Adds City to County adjustments.

F., G. No change

H. New clause adds City required to Conduct program reviews of BID operations and investigate claims of irregularities by stakeholders.

**This one is scary. Any one stakeholder could cause an expensive problem.**

3.2 In old contract is now 3.4 and there is no change.

**New 3.2 is a confusing recital of how we get our funds. I would guess the request for disbursement is the same as previously received from the City and sent to them on the new form but it seems to refer to the limiting disbursements to the amount in the budget – not the amount collected from the County. It appears to be another attempt by the City Clerk people to try to tie our receipts to our budget. So who gets the money left over?**

**New 3.3 further confuses the money issue. It states that old assessments when collected will be charged against the year they occurred. What happens if they occurred in previous management contract? See summary for budgetary problems.**

3.5 No change.

-5-

Section 4

No changes

Section 5

Increases time to send our money to 20 days.

Section 6

6.1 adds " District special fund". Deletes deducting costs on a proportionate basis and adds right to charge us for liaison activities and assistance to reimbursable costs. It does not outline how these costs will be accrued. Will we be charged for help to new BID's or those with less expertise? It removes the fixed amount stated in our old contract and has no minimum or maximum charge. Open-ended.

6.2, 6.3, 6.4 no change

Section 7

7.1 Increases from 2 to 3 years the length of time we have to keep records available to City Clerk.

7.2 no change

Section 8

Refers to Appendix A which spells out insurance coverage – now requires D & O coverage of \$500,000. We carry \$5,000,000.

Section 9

Language changes but no changes in meaning.

Section 10

Notices now go to Karen Kalfayan.

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Section 11

Adds "including any funds in possession of the Corporation" but does not spell out how or who will pay any liabilities when the Management plan concludes.

Section 12

Adds language keeping individual members of the Board from voting and/or entering into agreements that would be a conflict of interest. Allows employees and directors to provide assistance to other groups for remuneration. Previous contract said it had to be pro-bono.

Sections 13, 14, 15, 16

No change

Section 17

Adds language "nor shall the Corporation be considered a legislative body"

Section 18

Living Wage language has not changed. Says "extent applicable". However, Appendix A has all the language pertaining to Living Wage and the information regarding sub-contractors, etc. Should this remain in contract?

Sections 19 and 20

No change

Section 21

**New:** Incorporates Appendix A into contract.

The Appendix was written primarily for for-profit contractors and calls for items that are not applicable to our non-profit:

- (1) It calls for Business Tax Registration Certificate.
- (2) Has reference to sub-contractors which makes it questionable if we can contract out any work.

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- (3) Has the living wage information and requires the sub-contractors to be listed. Does it require them to then pay living wage?
- (4) Do our sub-contractors have to agree to Equal Benefits Ordinance?
- (5) Do our sub-contractors have to abide by "Americans with Disability" clauses?

**Michael Carey - Re: contract meeting**

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**From:** Kerry Morrison <kerryhm@earthlink.net>  
**To:** Karen E Kalfayan <KKalfayan@clerk.lacity.org>  
**Date:** 12/12/2001 12:47 PM  
**Subject:** Re: contract meeting

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Karen, I have a marked up version of my contract, and I hope we can go through it provision by provision, but here are some general observations:

1. Contract needs to recognize some of the changes brought about by AB 1021. Specifically, there is no longer any need to reference the Advisory Board. Also, since all board of director meetings are open to the public, no need to have at least one public meeting a year. The legislation also specifically articulates that the non profit is not a legislative body, and is PRIVATE -- therefore, the city's requirements that apply to "personal service contracts" -- e.g., living wage, equal benefits, and the like, do not apply here and should be dropped. The addenda should be eliminated as well.
2. There is a new reference to the concept of "operating periods." This just doesn't work when it comes down to managing the BID. For one thing, the assesment revenue doesn't arrive in a neat package during one year to the next. Revenues that weren't paid in year one, for example, may not show up until year two or later, and the budget has to be adjusted accordingly. There are a number of examples that we can share with you to show how this works -- the way it was originally should suffice (e.g., in previous contracts).
3. Why the need for audited financial statements -- was not a requirement before?
4. (Section 2.7) The 10 percent deviation has become more difficult in the contract. Our historic practice has been to follow the management district plan, of course, but if there is a need for deviation, (e.g., shift to security rather than maintenance, to reflect needs, for example) then it has been the practice to inform the stakeholders at the Advisory Board meetings and to seek approval from the Advisory Board. We would then notify the city clerk -- but there has been no previous requirement for city council action. I personally think this is overkill -- especially now that our meetings are mandatorily open to public, and property owners have greater opportunities to weigh in on such things. Here's a good example -- we never knew we were going to be sued by a property owner and that we would have to ultimately pay his attorney fees. That threw our legal budget totally out of whack.
5. 3.1.H -- this open-ended ability to investigate complaints to city clerk made by stakeholders is going to bring the entire system to its knees, if you leave the language like this. In every BID, there are

some unhappy stakeholders -- and they should work through due process with their neighbors on the board. I know something must've happened in Westwood that precipitated this -- but I will give you the name of three people here in Hollywood who will call you CONSTANTLY if you keep this language the way it is. (You could probably poll your staff to ask them who those three people will be, and you will come up with the same names, and you will never be able to get your job done if you investigate everything they toss your way...)

6. City fees -- this is totally open-ended. We need to budget -- and we need to understand the rationale for how these fees are charged. In the past, there was an amount.

7. There is no discussion of the "rollover funds" from previous BID -- that according to our Management District plan will become a "special projects account" in the new BID. Presumably, for the next several years, funds that continue to accrue to the "old BID's account" will then be forwarded to us for the special projects account. In Phase I we are owed about \$77,000 in past due delinquent assessments. In Phase II, it amounts to \$193,000. Most of this is from Church of Scientology.

Karen, these are just some broad categories -- and I have specific wording issues if we go through paragraph by paragraph. Our guiding principles should be: (1) respect the private nature of these property owner associations -- and ensure there is nothing in the city contract which blurs the lines in this respect; (2) make it less cumbersome on city clerks office to manage this function -- e.g., minimize new requirements for "operating periods," stakeholder complaint investigations and unnecessary reports (which presumably adds to city fees); (3) provide help and guidance to BIDs by securing funds from property owners who don't pay, and government agencies who don't pay -- that would be a real service and benefit to the BIDs.

Give me a call if you need any additional insight before tomorrow.  
Looking forward to our meeting -- thanks, Kerry

Karen E Kalfayan wrote:

>

> Yes, I'll be there. I asked Annette to be there, also. We were expecting to get a list of your concerns. So far, we don't have any specifics. It would help to have that in advance. There are likely some areas that can be addressed right off the bat, then we can discuss the bigger issues.

>

> >>> "KerryHM@earthlink.net" <kerryhm@earthlink.net> 12/12/01 09:25AM >>>

> Karen, are you going to meet at this meeting tomorrow in Mike Carey's

> office at 11:00? I was also wondering if Annette Bogna (I'm assuming

> she is the city attorney working on BID contract issues) will be there.

> I think it would be very useful to get all the right people in the room

> the first time, so we don't have to meet again.

>

> It will be also useful for city attorney to hear from day-to-day

> managers of a BID as to why some of these new provisions are 100 percent

> impractical.  
>  
> thx  
> Kerry



11<sup>th</sup> AM 12/15  
Train 7 pages  
Miles from her attorney  
AGREEMENT NO. DRAFT

rec'd  
10-22-01

there are good reasons to sign the contract

This Agreement ("Agreement") is entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), and the HOLLYWOOD ENTERTAINMENT DISTRICT PROPERTY OWNERS ASSOCIATION, a California nonprofit corporation ("Corporation"), for the administration of the Hollywood Entertainment District Business Improvement District, with reference to the following facts:

allow existing cm

#### RECITALS

- A. On September 21, 2001 the Los Angeles City Council established a Property and Business Improvement District known as the Hollywood Entertainment District Business Improvement District ~~Property and Business Improvement District~~ (hereinafter "District"), pursuant to Section 36600 et seq. of the California Streets and Highways Code (hereinafter "Act") and California Constitution Article XIID, by and through the adoption of City Ordinance 174,250 (Council File 00-1375). Said Ordinance authorized the annual levy of a special assessment to support district programs, activities and services.
- B. Pursuant to the aforementioned Ordinance and enabling laws, a system of charges ("Assessment[s]") has been levied upon the various parcels of real property located within the District.
- C. Such Assessment levied and collected by the City shall be used only for the purposes set forth in said Ordinance, which incorporates by reference the Management District Plan, except for any City costs or expenses which are charged to the District by the City for administration of the District program.
- D. The services and activities to be performed by the Corporation are of a supplemental nature, such that, were it not for the establishment of the District, the supplemental services could not or would not be performed by the City or by City employees, and that the interests of the City are better served by an agreement with the Corporation than by the performance or attempted performance of such supplemental services and activities by the City.
- E. The City currently intends that the level of services presently being provided by the City in the area within the District ("baseline service level") will not be affected by the establishment of the District or the levying of assessments.
- F. The City Council has authorized the Los Angeles City Clerk ("City Clerk"), as Business Improvement District Program Coordinator, and subject to approval by the Los Angeles City Attorney, to execute and administer this Agreement for administration of the District program. *is this subject to add'l scrutiny?*
- G. Subsequent to adoption of said Ordinance by the Los Angeles City Council, and prior to the execution of the Agreement, Corporation has commenced tasks associated with this Agreement including, but not limited to, the purchase of insurance as required in Section 8.1. herein.

NOW, THEREFORE, the City and the Corporation in consideration of the recitals, mutual promises, covenants, agreements and representations set forth below, hereby promise, covenant, agree and represent as follows:

Section 1. TERM OF AGREEMENT

- 1.1 The term of this Agreement shall be from January 1, 2002 to and including December 31, 2003 and shall include two operating periods. The two operating periods shall be: 1) January 1, 2002 to December 31, 2002; 2) January 1, 2003 to December 31, 2003, inclusive.
- 1.2 The Corporation may request an extension of the termination date beyond each of the two operating periods in order to allow the Corporation to expend any remaining funds for authorized programs in the event that all District funds are not received or spent by December 31<sup>st</sup> of each operating period. Said extension shall be at the sole discretion of the City.

*What significance to "operating periods"*

*↓ funds from 2002 should roll into 2003.*

Section 2. CORPORATION RESPONSIBILITIES

- 2.1. PROGRAM IMPLEMENTATION AND OPERATION. The Corporation shall be fully responsible for developing, implementing, directing and operating the District programs as described in the Management District Plan, pursuant to Section 36622 of the Act. ~~The District Advisory Board shall not provide for, or be responsible for, the provision, management or administration of any District programs, improvements or activities.~~ The Corporation understands and expressly agrees that it will comply with all applicable laws and regulations. *omit*
- 2.2. PROGRAM AND BUDGET REPORTS. The Corporation shall cooperate ~~with the District Advisory Board~~ relative to the preparation and submission to the City Council of Quarterly Progress Reports and an Annual ~~Planning~~ Report for each year for which Assessments are to be levied and collected by the City. The Corporation shall arrange for submission to the City Clerk various District program plans and reports, including the following:
- A. Annual Report. The Corporation shall cooperate ~~with the Advisory Board of the District~~ relative to the preparation and submission to the City Clerk of an Annual Report for each fiscal year for which assessments are to be levied and collected. The Report shall be prepared in accordance with Section 36633 of the Act and shall contain all items required by said Section. The Report shall be submitted on or before August 1, 2002 for the second operating year, and on or before August 1 of each successive year of operations. The District programs, improvements and budget, as contained in the Management District Plan and as adopted by the City Council during the required public hearing process to establish the District, shall be considered the approved Annual Report for the first year of District operations. *dates*
- B. Quarterly Reporting Requirement. The Corporation shall submit quarterly activity reports. The report for January, February and March of each District operating year shall be submitted no later than April 30 of the subject year; the report for April, May and June no later than July 31 of the subject year; the report for July, August and September no later than October 31 of the subject year; and the report for October, November and December no later than January 31 of the subsequent year. The activity reports shall describe, in narrative summary form and including any statistical or other supporting data as appropriate, the status and progress of the various District programs and activities as described and referenced in the relative Annual Planning Report.
- 2.3. FINANCIAL STATEMENTS. For each year of District operations ("fiscal year") the Corporation shall, within 60 days of the close of the subject fiscal year, submit to the City Clerk one complete

*↓ for us this must be by Feb 28<sup>th</sup>?*  
*→ prefer original dated 3/31 - especially if audited is req'd.*

set of financial statements, including disclosures, covering the subject fiscal or operating year, compiled and audited by a Certified Public Accountant.

- 2.4. PROGRAM COORDINATION. The Corporation shall render professional services and shall utilize and cooperate with the City Clerk, or such personnel as the City Clerk designates, to provide work program coordination consisting of budget and program development and implementation, program administration, assessment verification, and various related plans, projects and reports.

- 2.5. SUPPORT SERVICES. The Corporation assumes responsibility for the contracting for support services as required, and paying for all such direct and indirect expenses as may be necessary for the timely completion of work. Any obligations or expenditures for items not budgeted shall not be paid through assessments collected for the District. In administering subcontracts as necessary for providing District programs, improvements or activities, the Corporation shall comply with all applicable State, County and City laws and regulations.

LIAISON WITH COMMUNITY. The Corporation shall maintain an ongoing liaison relationship with the community, which shall include:

- A. Public Meetings. The Corporation shall organize and conduct, at a minimum, one annual public meeting to be noticed in writing by the Corporation to all assessed property owners in the District. This meeting will be conducted at a location within the District, in order to allow the property owners to familiarize themselves with the officers and functions of the Corporation and other members within the District, and to inform the Corporation's representative of their concerns and desires. A representative of the City Clerk's Office may attend as a member of the panel during said meeting to provide information and assistance.

B. Newsletters. The Corporation shall prepare a District newsletter to be produced on a quarterly basis, at a minimum, and made available to all assessed property owners in the District. The Corporation may, at the Corporation's option, provide the newsletter via standard mail or by electronic transmission, or by maintaining a supply of newsletters at the Corporation's office. The newsletter will be designed to facilitate and maximize the exchange of information between the Corporation, the City and the members of the District. Each issue of the newsletter shall be submitted in duplicate to the City Clerk for reference.

- C. Other events and activities which involve the members of the District and which encourage attainment of the goals and objectives described in the Management District Plan.

- 2.7. BUDGET VARIANCE. Each program, as specified in the Management District Plan, shall be implemented within the budget amount specified. On an annual basis the ~~Advisory Board~~ may, as provided for by law, submit for City Council approval any proposed changes in the budget allocations or Assessments. However, the Corporation shall have the right to request the City Clerk to make budget allocation changes from one line item to another that do not exceed ten (10%) percent of the total budget for that line item. If the Corporation decides to make budget allocation changes that exceed ten (10%) percent of the total budget, the Corporation shall submit a written request for an adjustment to the ~~City Council~~ City Clerk.

- 2.8. ASSESSMENT RECORDS. The Corporation shall maintain a complete database or other

comprehensive listing, current to the most recent property tax year available, containing the following information: the assessor parcel number and situs address of all parcels in the District; the name and address of the legal owner of each parcel; the amount of Assessment levied upon each parcel; the proportionate financial obligation of the Assessment levied upon each parcel, in relation to the entire District Assessment; and, the Assessment calculations for each parcel, including all variables used in the calculation of the Assessment. Said database shall be updated at least once each year during District operations to reflect changed conditions and to accurately reflect the status of the assessed parcels. The City Clerk may, at the City Clerk's discretion, provide assistance in compiling or correcting assessment data or information relative to properties in the District; however, the City Clerk shall in no way be obligated to prepare, produce or correct such data or information. Corporation agrees to make such District data available at the Corporation's office for inspection by property owners in the District during regular business hours.

- 2.9. ANNUAL ASSESSMENT PREPARATION. By June 1<sup>st</sup> of each District operating year beginning with June 1, 2002, the Corporation shall supply the City Clerk with Assessment data for placement on the Los Angeles County Assessor tax roll for the subsequent tax year, in a format to be prescribed by the City Clerk. The Assessment data shall include the following: assessor parcel numbers of all parcels in the District; the amount of Assessment to be levied upon each parcel; exemption documentation acceptable to the City Clerk, the Assessment calculations for each parcel, including all variables used in the determination of the Assessment, and other information which the City Clerk may require. Any corrections or adjustments to the annual assessment transmittal, as well as the accuracy of any such corrections or adjustments, shall be the responsibility of the Corporation. Upon request of the City Clerk, Corporation hereby agrees to promptly complete a written request for an investigation of discrepancies and make all reasonable efforts to obtain additional related documentation, as described in Section 3.4. herein.

Add city will promptly pay assessment.

### SECTION 3. CITY RESPONSIBILITIES.

- 3.1. ADMINISTRATION. This Agreement shall be administered on behalf of the City by the City Clerk.

The City Clerk shall:

- A. Effect the timely collection of the annual assessment.
- B. Coordinate the collection of the annual assessment through an interagency agreement with the County of Los Angeles, and through other means, including direct billing, as the City Clerk deems appropriate.
- C. Provide general assistance, clarification or information to the Corporation, the assessed parties, business organizations and the public at large.
- D. Maintain a continual liaison with the Corporation, including assisting with the coordination of services from various other City departments, bureaus and agencies.
- E. Authorize supplemental Assessments, adjusted Assessments, Assessment exemptions, reductions or refunds, to be issued by either the City or the County of Los Angeles.
- F. Authorize and direct the disbursement of Assessment funds to be made by the City Controller to the Corporation.

This should be the only prop. data part of public record.

negotiate agreements w/ other government agencies to ensure timely payments of assessments

provide detailed tracking of delinquent

assessments, along w/ maintaining/assessing w/ all necessary details to Corp.

G. Perform other related administrative, analytical, clerical, financial, technical or public relations tasks, as mutually agreed to by the City Clerk and the Corporation.

H. Conduct program reviews of BID operations and investigate claims of irregularities by stakeholders.

*let's discuss this → these claims should*

3.2 The City Clerk shall (a) review the Corporation's quarterly reports and requests for disbursement and, if the reports are acceptable, shall authorize the Controller to disburse the amount requested unless there are insufficient funds available to make a full disbursement, or unless the request exceeds the authorized level of expenditure for the operating period as defined in the District's management plan, in which case the disbursement will equal the available funds, and (b) provide the Corporation with access to pertinent records, studies and maps, subject to applicable City, State, and Federal regulations.

3.3 The City shall make available to the District the full value of all prior year Assessments collected during the current contract year and charge said Assessments against the appropriate prior year's authorized level of expenditure. *???? No what about funds that become available in Year 2?*

3.4. DISCREPANCIES. The City Clerk may assist with the resolution of any discrepancies in individual Assessment amounts or calculations. The City Clerk reserves the right to:

A. Conduct reviews of existing primary data; verify Assessment data as compiled by any consultant or subcontractor hired by the Corporation; perform field or site inspections to verify the accuracy of existing or secondary data, or to substantiate a claim made by a property owner subject to assessment in the District.

B. Recalculate the Assessment amount due and direct the Los Angeles County Auditor-Controller to respond appropriately.

Such actions by the City Clerk may require a written request from the Corporation to conduct the investigation; additional related documentation, such as a written request from the affected property owner, may also be required. All City Clerk costs associated with such supplemental investigations may be recovered from the District Assessments collected, subject to existing or future City policies and procedures regarding recoverable costs and expenses.

3.5. CONFIDENTIAL INFORMATION. Certain types of information obtained and possessed by the City, including certain tax and business data, have been determined to be confidential information by the City Attorney and will not be made available to the Corporation.

*[Can we define what is confidential at the corp. level also?]*

#### SECTION 4. AVAILABILITY OF DOCUMENTS.

4.1. The designs, plans, reports, files, invoices, investigations, materials and documents prepared or acquired by or for the Corporation pursuant to this Agreement (including any duplicate copies) shall be made fully available to the City. Corporation agrees to exercise reasonable and due diligence in providing for the secure storage of all such materials and to provide copies for official City records upon request from the City Clerk.

*BID administration withheld*

#### SECTION 5. DISBURSEMENTS.

*except to the extent that disclosure wd.*

5.1. Based upon the annual levies as listed in the Management Plan and with the exception of

*corporate atty/client privilege*

used to be 10+10  
now 20.20 day can we make 15+15?

recoverable City costs, and net of any County charges or supplemental City service fees, loans or advances, the City shall disburse to the Corporation the actual revenues received from the assessments. Assessment revenue shall be disbursed to the Corporation by the City periodically throughout each year, coinciding approximately within twenty (20) business days of the date of receipt of a transmittal of funds to the City from the County of Los Angeles, or the receipt of funds

through the direct billing by the City of public agencies or other entities with assessable properties in the District.

The City Clerk will notify the Corporation of the amount of funds available and the Corporation will deliver an invoice to the City Clerk requesting such funds. The City Clerk agrees to pay the Corporation the amount due the Corporation within twenty (20) business days of receiving said invoice, ~~except in the case of circumstances beyond the control of the City Clerk.~~ The City shall not be responsible for delays in disbursements to the Corporation due to delays in funds transmittals by the County of payment delays by other public entities, organizations or agencies.

- 5.2. If the Corporation is dissolved, or dissolves itself, prior to or upon the expiration of this Agreement, any unexpended monies will be transmitted to the City for distribution as described in Section 11 of this Agreement.

## SECTION 6. COSTS AND EXPENSES.

- 6.1. **RECOVERABLE COSTS.** The City shall deduct from the Corporation's City account or District special fund, the Corporation and the District's share of recoverable City costs. The City costs associated with the District's billing, account maintenance, program and report reviews as well as liaison activities, assistance to the Corporation and general administration will be reimbursed to the City. Such costs may be withheld by the City Clerk prior to making any distribution of funds to the Corporation.

- A. First Operating Year. Recoverable costs are reimbursable from the District's assessment revenues for the first year of operations. The reimbursable direct costs and expenses include salaries, general expenses and the District's share of required Program equipment costs.
- B. Subsequent Operating Years. The City Clerk shall provide the Corporation with a report detailing the recoverable or reimbursable costs for the second year, and for each subsequent year of District operations, prior to the commencement of each year of District operations, during the term of this Agreement, when requested by the Corporation in writing. Salary expenses and equipment expenses may be adjusted annually to reflect authorized changes in salaries of the Civil Service classifications of City Clerk employees involved in District administration and the City's cost of obtaining required equipment. The pertinent subsection of the City Clerk's authorized Department Budget may be applied.
- C. The amounts and categories of allowable recoverable or reimbursable City costs are subject to existing or future City policies and procedures regarding recoverable costs and expenses, and remain subject to review and action by the City Council.

- 6.2. **STANDARD CITY FEES.** All standard City fees, including but not limited to, fees or service charges for reproduction or transmittal requests or for the generation of real property or business ownership lists, reports or specific documents, may be applied to requests by the Corporation.

- 6.3. **SUPPLEMENTAL CITY FEES.** Supplemental fees may be charged to the Corporation by the City to cover the additional costs incurred for specialized services, including: researching and compiling data; preparing specialized types of reports specific to the needs of the Corporation; and, performing site inspections as described in Section 3.4. of this Agreement. The Corporation shall request the performance of all such specialized services in writing. If the City determines to proceed with said request, the City shall notify the Corporation of any applicable fees prior to performing the specialized service requested. Such fees shall be deducted from the Assessments collected, or shall be paid in advance by the Corporation, at the City Clerk's discretion.

- 6.4. **LOS ANGELES COUNTY FEES.** All fees and costs charged to the City by the County of Los Angeles for processing or adjusting Assessments or Assessment data, including, but not limited to District report preparation fees, supplemental billing fees and technical, research or systems expenses, shall be deducted from Assessments collected.
- what is this? AMOUNT?*

## SECTION 7. COST AND EXPENSE RECORDS.

- 7.1. In accordance with generally accepted accounting principles, the Corporation shall maintain full and complete records of activities and services performed under this Agreement. Such records shall be open to the inspection of the City and the City may audit such records. The Corporation agrees to keep all such records on file in a secure location, which may include an area designated by the City Clerk, for a minimum of three (3) years subsequent to the expiration of this Agreement.
- 7.2. The records maintained by the Corporation shall include all invoices and receipts for expenditures incurred and must include supporting documentation for the activities or programs described in the District budget or Management Plan. The City reserves the right to perform a contract compliance audit at least once annually. The Corporation agrees to keep all receipts and other supporting documents available for inspection and as specified in section 7.1. of this Agreement.

## SECTION 8. INSURANCE.

- 8.1. The insurance requirements are provided in Appendix A, "Standard Provisions for City Personal Services Contracts", attached hereto and made a part hereof. All references to "contractor" or "consultant" shall refer to the Corporation. Standard City insurance requirements shall apply, including general liability, indemnification and naming the City as an additional insured in the Corporation's policy and evidence of coverage and Director's Liability coverage.

## SECTION 9. AMENDMENTS.

- 9.1. The City periodically may request changes of an administrative nature relative to the scope of services of the contract to be performed by the Corporation hereunder. Such changes, which are mutually agreed upon by and between the City and the Corporation and which do not materially alter the programs, activities or improvements described in the Management District Plan, shall

be incorporated in written amendments to this Agreement. This Agreement may not be amended except in writing by the mutual agreement of both parties.

- 9.2. A failure to object to a breach of this Agreement shall not constitute an amendment thereof, nor shall it waive any future breach of the Agreement.

## SECTION 10. NOTICES.

- 10.1. Notice to the parties shall, unless otherwise requested in writing, be sent in duplicate to:

City: Karen E. Kalfayan, Chief  
Administrative Services Division  
Office of the City Clerk  
200 North Spring Street, Room 224  
Los Angeles, California 90012

Attn: Special Assessments Section  
(213) 978-1099 / Fax (213) 978-1130

Corporation:

*Kerry Morrison, Executive Director*  
~~David Green, President Board of Directors~~  
HOLLYWOOD ENTERTAINMENT DISTRICT  
PROPERTY OWNERS ASSOCIATION  
6425 Hollywood Blvd., Suite 401  
Hollywood, CA 90028

*put Paul president*

(323) 463-6767 / Fax (323) 463-1839

- 10.2. Any notice, report, newsletter or other communication required or prepared pursuant to this Agreement shall be deemed to be properly transmitted when delivered via messenger or deposited in the United States mail for delivery to the parties listed above. Changes to the address of any of the parties may be accomplished for purposes of this Agreement by providing written notice of such change via the United States mail.

*no - the corporation  
may have funds from other  
sources.*

## SECTION 11. ASSETS OF THE DISTRICT.

- 11.1. In the event that either the District is disestablished or otherwise discontinued, then the existing assets of the District, including any funds in possession of the Corporation, shall become the property of the City. However, said assets shall only be used: (1) to pay the City any outstanding sums due to it by the District or the Corporation and, (2) to disburse the remaining assets, after payment to the City, to the owners of assessed properties in an amount proportionate to the amount of assessment paid by the property owner, on a prorated basis, subject to applicable state legislation and City Council approval. The City reserves the right and option to place tangible assets into City service, to sell the assets, or to consider the assets as fully depreciated salvage items, subject to City policy.

*why?*



SECTION 12. CONFLICT OF INTEREST.

*nothing prior to this corporation  
from entering into other contracts,  
including the ability to manage other  
Districts under contract to the city.*

12.1. For the duration of this Agreement, the Corporation or its employees or agents will not perform services that present a conflict of interest with the Corporation. In addition, neither members of the Board of Directors of the Corporation, nor its Executive Director, may enter into any contracts on behalf of the Corporation, nor vote on any District matters, when such contract or matter would be of financial benefit to the member or director over and above the general financial benefit to all businesses in the District.

12.2. Nothing in this section prohibits or precludes the Corporation's officers, members, directors, agents or employees from providing or presenting to other interested parties or entities, information or assistance related to the District's establishment or operations, or to the establishment or operations of other proposed or existing districts throughout the City.

*define*

SECTION 13. NONDISCRIMINATION.

13.1. In the performance of this Agreement, the Corporation shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition.

*what if the city screws up?*

SECTION 14. INDEMNITY.

14.1. Except for the ~~active~~ negligence or willful misconduct of the City, the Corporation undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including the Corporation's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by the Corporation or its employees, agents or subcontractors.

SECTION 15. ASSIGNMENT.

15.1. The Corporation covenants and agrees that it will not assign or transfer its rights under this Agreement, either in whole or in part, without first obtaining the written consent of the City, which consent may be granted or denied at the sole and absolute discretion of the City.

15.2. Any attempt by the Corporation to assign or transfer its rights or obligations without such prior written consent shall be null and void and may, at the option of the City, automatically terminate this Agreement.

SECTION 16. GENERAL FUND NOT LIABLE.

16.1. Neither the General Fund of the City, nor any other fund, revenue source or monies whatsoever of the City, except for the actual collected District Assessment net revenue, shall be liable for payment of any obligations arising from this Agreement. Said obligations are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or

upon its income, receipts or revenues.

- 16.2. This Agreement embodies all of the Corporation's reimbursement rights and no further note or other document shall be required to be executed by the City.

#### SECTION 17. CORPORATION NOT AGENT OF CITY.

- 17.1. Neither the Corporation or any of the Corporation's employees, agents, representatives or subcontractors are or shall be considered to be agents of the City, nor shall the Corporation be considered a legislative body, relative to the performance of the Corporation's obligations under this Agreement or for any other purpose.

*Why is this necessary? We are a separate corporation - both by contract and by new state legislation.*

#### SECTION 18. COMPLIANCE WITH CITY'S LIVING WAGE ORDINANCE.

- 18.1. Corporation agrees to comply to the extent applicable with the City's Living Wage Ordinance 171,547. If the City determines that any provisions of the Ordinance do apply to the Corporation, the Corporation's authorized designee will be required to sign a Declaration of Compliance regarding the applicable provisions.

#### SECTION 19. SEVERABILITY.

- 19.1. If any portion of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

#### SECTION 20. WAIVER.

- 20.1. The waiver by any party to this Agreement of breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

#### SECTION 21. STANDARD PROVISIONS FOR CITY PERSONAL SERVICES CONTRACTS.

- 21.1. Corporation agrees to comply with all applicable provisions as described in the City's "Standard Provisions for City Personal Services Contracts" document ("PSC"), which is attached as Appendix A and is incorporated herein by reference. Compliance shall include the timely completion and return of any required City forms, including the "Certification of Compliance With Child Support Obligations", which is included in Appendix A as Exhibit 2.

*I don't think this is necessary for these same reasons*